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BY ECF

Honorable Laura Taylor Swain  
Southern District of New York  
United States District Judge  
United States Courthouse  
500 Pearl Street  
New York, New York 10007-1581

Re: *Tiffany and Co. v. Costco Wholesale Corp.*,  
Civil Action No. 13-1401 (LTS) (DCF)

Dear Judge Swain:

We write as counsel for Costco to draw the Court's attention to the Second Circuit's recent decisions in *Gucci America Inc. v. Bank of China*, 768 F.3d 122 (2d Cir. 2014), and *Tiffany LLC v. China Merchants Bank*, Appeal Nos. 12-2317, -230, 2014 WL 4627662 (2d Cir. Sept. 17, 2014).

In *Gucci*, the Second Circuit held that a claim for an accounting of profits under 15 U.S.C. § 1117(a) is an "equitable remedy." 768 F.3d at 130 ("Plaintiffs here seek the equitable remedy of an accounting of profits."). In *Tiffany*, the Second Circuit similarly held that "a claim for an accounting of profits under the Lanham Act is equitable in nature." 2014 WL 4627662 at \*2. Both decisions embrace Judge Buchwald's reasoning in *Tiffany (NJ) LLC v. Forbse*, No. 11 Civ. 4976, 2012 WL 1918866 (S.D.N.Y. May 23, 2012), cited on page 14 of Costco's reply memorandum filed July 15, 2014.

The Second Circuit's *Gucci* and *Tiffany* decisions provide additional support for Costco's pending motion for an order striking the Plaintiffs' demand for trial by jury.

Respectfully yours,

/s/ James W. Dabney  
James W. Dabney